

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

TAMRA L. ROBBINS)	
Claimant)	
VS.)	
)	Docket No. 1,022,921
HAYSVILLE HEALTHCARE CENTER)	
Respondent)	
AND)	
)	
PREMIER GROUP INSURANCE)	
Insurance Carrier)	

ORDER

Respondent appeals the preliminary hearing Order of Administrative Law Judge Nelsonna Potts Barnes dated July 6, 2005. Claimant was awarded benefits after the Administrative Law Judge (ALJ) determined that claimant's seven-day written notice of her intent to file an application for hearing, as required by K.S.A. 44-534a, had been complied with and that claimant had provided timely notice of her accident to respondent pursuant to K.S.A. 44-520.

ISSUES

- (1) Did claimant provide proper notice for her alleged injury?
- (2) Did claimant comply with the procedural requirements of K.S.A. 44-534a with respect to her demand for temporary total disability compensation benefits, payment of the bills of J. Mark Melhorn, M.D., and payment of the bills of Philip R. Mills, M.D.?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds that the Order of the Administrative Law Judge should be affirmed.

Claimant, an employee of respondent, began noticing difficulties in her upper extremities approximately the beginning of February 2005, after being moved to respondent's kitchen.

On February 14, 2005, claimant went to her family physician, Wade A. Turner, M.D., for an examination. At that time, claimant had negative Phalen's and Tinel's tests, and Dr. Turner began examining her for possible rheumatoid factor, as well as superior vena cava syndrome. Additionally, on March 4, 2005, claimant underwent a CAT scan and was checked for lymph node difficulties, with the doctor checking for the possibility of cancer perhaps located in claimant's cervical area or in the lymph glands. Claimant underwent numerous tests, including a CAT scan¹ and nerve conduction studies.² Dr. Turner did indicate in his March 7, 2005 report that claimant might possibly have carpal tunnel syndrome, but there was no mention as to the cause of this condition.

When it was determined that claimant had upper extremity difficulties, she was referred to board certified orthopedic surgeon J. Mark Melhorn, M.D. Dr. Melhorn first examined claimant on March 28, 2005, after claimant had undergone nerve conduction studies on March 10, 2005, with Bart A. Grelinger, M.D. Dr. Melhorn ultimately diagnosed bilateral carpal tunnel syndrome and bilateral epicondylitis, performing surgery on claimant's left upper extremity on April 5, 2005, and the same surgery on her right upper extremity on April 19, 2005.

Claimant testified that just before the April 19 surgery, Dr. Melhorn informed her that her condition may be related to her employment with respondent. Claimant testified this is the first time she had an indication that her condition was related to her work. The next day, on April 20, 2005, claimant presented to respondent a handwritten note indicating that she suffered from a work-related injury and was requesting workers compensation benefits.³

Claimant had initially contacted her supervisor, Beverly Mitchell, requesting to be off work. Ms. Mitchell advised claimant on about March 4, 2005, that she could not be off work. Claimant was not referred for medical care. Claimant then went to the administrator, Wade Taylor, and requested that she be off work. Mr. Taylor agreed, sending her home and placing her on medical leave. Claimant then proceeded to obtain the medical care through her own doctor, Dr. Turner.

Respondent contends that claimant failed to provide timely notice of accident as is required by K.S.A. 44-520. A claimant is obligated by that statute to provide notice of accident within ten days after the date of the accident. In this instance, claimant's last day worked for respondent was March 4, 2005, with claimant acknowledging a specific indication of a work-related injury was not received by the employer until April 20, 2005,

¹ According to claimant's testimony, the CAT scan was to check for a possible brain tumor. (See P.H. Trans. at 10.)

² Claimant underwent nerve conduction studies on March 10, 2005.

³ P.H. Trans., Cl. Ex. 6.

when claimant delivered the handwritten note. Claimant testified that up to that point, she was not aware that her condition was related to her employment. The Board finds that claimant did not provide timely notice of accident within 10 days, but that she has demonstrated just cause for her failure to do so, thereby extending her time to give notice to 75 days pursuant to K.S.A. 44-520.

K.S.A. 44-520 states that the ten-day notice shall not bar any proceeding for compensation if the claimant can show that a failure to timely notify was due to just cause. There are factors which need to be considered in determining whether just cause exists under this statute. Some of those factors include,

- (1) The nature of the accident, including whether the accident occurred as a single, traumatic event or developed gradually.
- (2) Whether the employee is aware he or she has sustained either an accident or an injury on the job.
- (3) The nature and history of claimant's symptoms.
- (4) Whether the employee is aware or should be aware of the requirements of reporting a work-related accident, and whether the respondent has posted notice as required by K.A.R. 51-12-2.⁴

In this instance, while claimant began experiencing symptoms after she began working in respondent's kitchen, her first contact with Dr. Turner resulted in a potential preliminary diagnosis of either arthritis (with the doctor searching for rheumatoid signs) or possible cancer. Claimant underwent CAT scans and other blood tests to determine the cause of her condition. Claimant's testimony that she was not advised that she had carpal tunnel syndrome which was related to her employment until the time of the April 19 surgery with Dr. Melhorn is, at this point, uncontradicted. Uncontradicted evidence which is not improbable or unreasonable may not be disregarded unless it is shown to be untrustworthy.⁵

Claimant's accident developed over a period of time, after claimant transferred to the kitchen. Claimant was not aware that she sustained an accident or injury on the job, but testified that she, instead, had concerns about arthritis, which claimant acknowledged preexisted in her ankles, and also a concern about possible tumors or cancer.

⁴ *Russell v. MCI Business Services*, No. 201,706, 1995 WL 712402 (Kan. WCAB Oct. 9, 1995).

⁵ *Anderson v. Kinsley Sand & Gravel, Inc.*, 221 Kan. 191, 558 P.2d 146 (1976).

There is also no evidence in this record whether respondent posted the notices required by K.A.R. 51-12-2, and claimant did not testify regarding her knowledge of the requirements of providing notice to her employer.

The Board finds that there was just cause for claimant's delay in providing notice to this respondent. Therefore, the notice requirements of K.S.A. 44-520 are extended to 75 days. Both the April 20, 2005 note provided by claimant, which was hand carried to the employer, and the April 25, 2005 certified letter from claimant's attorney, which was received by the employer on April 26, 2005, constitute timely notice under K.S.A. 44-520, as both fall within the 75-day time limit.

Respondent further contends that claimant failed to follow the procedures contained in K.S.A. 44-534a. That statute requires that at least seven days prior to filing an application for preliminary hearing, the applicant give written notice to the adverse party of the intent to file the application, with the notice of intent specifying the benefits being sought. As noted above, claimant had delivered to respondent by certified mail the April 25, 2005 letter from her attorney. That letter specifically discusses a desire for temporary total disability compensation if claimant is taken off work by the authorized physician. At the time that letter was delivered to respondent, there had been no authorized physician, as claimant's contact with both Ms. Mitchell and Mr. Taylor resulted in no authorized medical being offered. However, claimant's intent is clear. The Board finds that the April 25, 2005 letter from claimant's attorney satisfies the notice requirements of K.S.A. 44-534a. The Board, therefore, finds that the Order of the ALJ should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated July 6, 2005, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of November, 2005.

BOARD MEMBER

c: Steven R. Wilson, Attorney for Claimant
Terry J. Torline, Attorney for Respondent and its Insurance Carrier
Nelsonna Potts Barnes, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director